LIBRARY
SUPREME COURT

FILED
FEB 7 19
MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-981

CHARLES W. RAMSEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

ALLAN M. PALMER
1707 N Street, N.W.
Washington, D.C. 20036
(202) 785-3900

Attorney for Petitioner

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

TABLE OF CONTENTS

	Page
JUDGMENTS BELOW	1a, 1b
JURISDICTION	2
STATUTE INVOLVED	2
QUESTION PRESENTED	2
FACTUAL STATEMENT	3-15
REASONS FOR GRANTING THE WRIT	15
CONCLUSION	23
APPENDIX	1a, 1b
JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AFFIRMING THE CONVICTION	1a
ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT DENYING A PETITION FOR REHEARING	1b

TABLE OF AUTHORITIES

Cases:

Bronston v. United States, 409 U.S. 352 (1973)	3, 15
Galanos v. United States, 49 F.2d 898 (6th Cir. 1931)	17
United States v. Lattimore, 127 F. Supp. 405 (D.C. D.C.), aff'd 98 U.S. App. D.C. 77, 232 F.2d 334 (1955)	17
United States v. Wall, 371 F.2d 398 (6th Cir. 1967)	16
United States v. Winter, 348 F.2d 204 (2d Cir. 1965)	17

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No.

CHARLES W. RAMSEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Charles W. Ramsey, Petitioner herein, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above entitled case on January 9, 1975.

OPINION BELOW

The original judgment affirming the conviction was without opinion entered on December 10, 1974. A Petition for Rehearing was also denied without opinion entered on January 9, 1975. These orders are reproduced *infra* at Appendix 1a, 1b.

JURISDICTION

The final order in the Court of Appeals was entered on January 9, 1975 and the time for submitting the instant Petition runs until February 8, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTE INVOLVED

"Whoever under oath in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration . . . shall be fined not more than $10,000 or imprisoned not more than five years, or both." 18 U.S.C. §1623(a).

QUESTION PRESENTED FOR REVIEW

1. Whether Petitioner was entitled to a judgment of acquittal on an indictment charging him with making a false declaration before a grand jury in responding to a

question concerning 1111 Massachusetts Avenue, N.W., Washington, D.C. *i.e.*, "But you've never had an apartment there yourself? A. No.", when it was undisputed that he previously had one there in the name and *identity* of Lawrence Jones and he understood or interpreted the term "yourself" as referring to *his real* identity – Charles Ramsey – and thus whether his answer was technically responsive to the inquiry and therefore subjectively true – an aspect of the law of perjury unanswered by *Bronston v. United States*, 409 U.S. 352 (1973), and never before considered by this Court.

FACTUAL STATEMENT

Petitioner was indicted in one count for making a false declaration before a grand jury in violation of 18 U.S.C. §1623(a). He was convicted thereon and sentenced to imprisonment for a term of from one to four years.

A. The Indictment.

The indictment was broken down into five paragraphs as follows:

1. This alleged that on March 14, 1973, Petitioner testified under oath before a properly impanelled grand jury and did then knowingly make a false declaration.

2. This alleged that at the time, the grand jury was investigating any violations of the Controlled Substance Act, 21 U.S.C. §801 et seq., or

violations of any other criminal statute of the United States.

3. This alleged it was material to the grand jury investigation to determine whether Charles W. Ramsey had ever rented an apartment at 1111 Massachusetts Avenue, N.W., Washington, D.C.

4. This alleged some of the precise questions and answers of Mr. Ramsey when he appeared before the grand jury on March 14, 1973, *i.e.*,

"Q. Are you familiar with the address of 1111 Massachusetts Avenue?

A. Yes, I am.

Q. Would you tell the Grand Jury how you are familiar with that address?

A. Yes. A friend of mine used to live in there.

Q. Who was that?

A. A girl named Ernestine Dyson.

Q. Have you ever lived there yourself?

A. I've stayed with a friend on occasions there, but I've never lived there.

Q. Okay. Who was that friend that you stayed with?

A. Ernestine Dyson.

Q. But you've never had an apartment there yourself?

A. No."

* * * *

Q. To get back to that apartment at 1111 Massachusetts Avenue, were you paying any of the rent on that apartment?

A. Yes, I was helping.

Q. How much were you contributing?

A. I don't recall.

Q. Would it have been over $100.00 a month?

A. I wasn't contributing that much.

Q. Over $50.00 a month?

A. (Nodding.)

Q. And for how long of a period?

A. Five or six months about.

Q. Was this in 1972?
A. Yes.
Q. Have you ever contributed money towards the rent of any other apartments besides this one?
A. No."

5. This concluding paragraph alleged that the "aforesaid testimony" of Charles W. Ramsey as he then and there well knew and believed, was not true in that he in fact rented an apartment at 1111 Massachusetts Avenue, N.W., Washington, D.C. during 1971 and 1972, using the name Lawrence Jones.

B. Trial Proceedings.

The government's first witness was Detective James E. Blackburn, who stated that on March 28, 1973, he reviewed Mr. Ramsey's grand jury testimony and subsequently commenced an investigation. On Friday, April 13, 1973, he responded to 1111 Massachusetts Avenue, N.W., Washington, D.C. and spoke with the resident manager there, Mrs. Sarah McGowan. His purpose in going there was to confer with Mrs. McGowan about Ernestine Dyson who was shown by prior grand jury testimony to reside at that address in apartment 706. The Detective was advised by Mrs. McGowan that Miss Dyson no longer lived there. After further conversation with Mrs. McGowan, Detective Blackburn obtained the leases and rental application for apartments 706 and 203 at 1111 Massachusetts Avenue, N.W. Further investigation revealed that apartment 203 was leased to a Lawrence Jones, alleged to actually be Charles W. Ramsey. On May 22, 1973, Mrs. McGowan

picked Mr. Ramsey's photograph from a group as being the person she knew as Lawrence Jones who had resided in apartment 203.

On cross-examination Detective Blackburn stated that he had served the subpoena on Petitioner to appear before the grand jury. Not finding him on the street, he went to his listed residence at 332 Sixth Street, S.E., Washington, D.C. He was not there and the Detective subsequently called back and spoke to a lady who stated that she was Petitioner's mother, but that he was not in. Blackburn was ultimately able to serve the subpoena on Mr. Ramsey.

The witness was then directed to page 43 of Petitioner's grand jury testimony of March 14, 1973, which the witness had previously reviewed as indicated.

"Q. Mr. Ramsey was asked at page 43, 'And are you familiar with an address which is 1808 Metzerott Road in Oxon Hill?
A. No, I am not."

Detective Blackburn had prepared this question for the Assistant United States Attorney to ask of Mr. Ramsey before the grand jury. However, he erred in stating Oxon Hill because the address was actually in *Adelphi*, Maryland.

"Q. So when Mr. Ramsey responded to 'Are you familiar with 1808 Metzerott Road in Oxon Hill,' 'No, I am not,' that was a correct and truthful answer, was it not?
A. As far as I know, yes.
Q. That was because Adelphi had been omitted by mistake? Isn't that right?
A. Yes, sir."

Mrs. McGowan testified that at the relevant time in question she was the assistant resident manager at 1111

Massachusetts Avenue, N.W., Washington, D.C. and that a Mr. Cord was the resident manager. During the course of her employment she had accepted rental payments from one Lawrence Jones for apartment 203 during the latter part of 1971 and 1972; he vacated the building in January, 1973. During her testimony, rent receipts for apartment 203 from Lawrence Jones were admitted into evidence; she identified Petitioner as the man she knew as Lawrence Jones. The witness also knew Ernestine Dyson as a former tenant in the building who had been evicted in the latter part of June or the first of July, 1973. Miss Dyson had occupied apartment 706 which had previously been lived in by Mr. Cord. During her tenure as assistant resident manager, Mrs. McGowan had also been the receptionist and bookkeeper at the building in which capacity she would "inquire of persons who they were to see, because all guests were to be announced, distribute mail and keep books." She indicated that she saw Petitioner two or three times a month; "fairly infrequently".

After the testimony of these two witnesses, the government completed its case by reading the following stipulated evidence to the jury:

> 1. The lease for apartment 203, 1111 Massachusetts Avenue, N.W., Washington, D.C. was executed on July 28, 1971, in the name of Lawrence Jones, which name was in fact written by Petitioner. Similarly, the application for said lease signed in the name of Lawrence Jones was filled out by Petitioner and signed by him.
>
> 2. On March 14, 1973, Petitioner appeared as a witness and was sworn as such before a grand jury duly impanelled and sworn in the United States District Court for the District of Columbia.

3. Petitioner's relevant testimony before the grand jury was read to the petit jury exactly as it appears in the instant indictment. The government then rested its case.

A motion for judgment of acquittal was denied by the Court.

In defense, Petitioner testified that he lived at 332 Sixth Street, S.E., Washington, D.C. for the past 19 years with his parents. He recalled having received a subpoena to appear before the grand jury from Detective Blackburn and having done so. The first time he appeared, however, he requested the assistance of counsel and reappeared on March 14, 1973, with counsel. During the course of his grand jury testimony, which covered 48 pages of transcript, Petitioner was asked 365 questions which he responded to. Although his attorney was not permitted to be with him during the interrogation, Petitioner was permitted to and did consult with him on 19 occasions outside of the grand jury room. Petitioner understood that the grand jury had the power to return indictments and was warned of his right against self incrimination by the Assistant United States Attorney in the grand jury prior to testifying. During the course of his entire interrogation, Petitioner never invoked his right to remain silent nor refused to testify. The questioning had covered details of his personal life including jobs, income, cars and friends which he had not been anxious to respond to. Having conferred with counsel prior to appearing before the grand jury, he had determined to answer the questions truthfully but exactly as asked without assuming anything. The following responses to questions were illustrative of his mental set before the grand jury.

1. When asked if he had any professional type of license like a taxicab license he asked to consult with counsel. Having done so he answered the question in the negative. The reason for the consultation was because he had a certificate from a correspondence school to operate business machines and was not sure if this certificate was within the scope of the term "license." It was concluded that the term as used in the question meant something that was issued from the Government instead of a private organization.

2. When asked if he was familiar with the address 1808 Metzerott Road in Oxon Hill, Maryland he responded, "No, I am not." This was a truthful answer, in fact, because he was only familiar with that address in Adelphi, Maryland. Had the address been properly given, he would have responded affirmatively; however, inclusion of "Oxon Hill" produced the negative response.

3. When asked the direct and clear question whether he had any safety deposit boxes, he said yes. When asked where they were located, he responded at the Riggs National and American Security Banks. Although he did not want to answer this personal question, he felt obliged to because of the way in which it had been framed.

Turning to the indictment, Petitioner admitted signing the lease and lease application in the name of Lawrence Jones; on neither of the documents did the name Charles Ramsey or Charles W. Ramsey appear. Apartment 203 was an efficiency which he had furnished for $200 to $300. All he kept there was underclothing. Appellant had rented this apartment to entertain and had used it but three or four times per month. (This had been corroborated by Mrs. McGowan in the government's case-in-chief.) He couldn't entertain

at home because his mother was under a doctor's care for a heart condition and didn't want to upset her. Petitioner further testified that the apartment was taken in the name of Lawrence Jones to avoid the fact of the rental from getting back to his mother and creating additional health problems for her. If he had used his correct name and address on the lease or application, any later default in rent would have probably come to his mother's attention he felt. Petitioner also knew Ernestine Dyson as a tenant in the building in question.

"Q. Getting to this series of questions on the indictment out of the 365 questions asked you:
"Question: Are you familiar with the address of 1111 Massachusetts Avenue?
"Answer: Yes, I am."
Is this a truthful answer as you understood the question?
A It is.
Q "Question: Would you tell the Grand Jury how you are familiar with that address?
"Answer: Yes. A friend of mine used to live in there.
"Question: Who was that?
"Answer: A girl named Ernestine Dyson."
Are those truthful answers?
A They are.
Q Did Ernestine Dyson live there?
A Yes, she did.
Q "Question: have you ever lived there yourself?
"Answer: I've stayed with a friend on occasions there, but I've never lived there."
That was the question and your answer; right?
A Yes.
Q Was that a truthful answer?
A Yes, it was.
Q In what regard?
Did you ever live there?

A No, I never lived there.
Q What did you understand the difference between staying as you used the word and living there?
A Well, when you live somewhere, you are there day in and day out. You have your clothing there and you cook, you know.
Q What did you consider 1111?
A Well, it was a place I stayed occasionally or perhaps go by, you know, with some friends that I couldn't take at home.
Q Where did you consider that you actually lived?
A At 332 Sixth Street, Southeast.
Q "Question: Okay. Who was that friend that you stayed with;
"Answer: Ernestine Dyson."
Is that a truthful answer?
A Yes.
Q What type of apartment did she have?
A She had a junior bedroom. It was a large, fairly large–
Q "Question: But you've never had an apartment there yourself?
"Answer: No."
As you understood the question, was that a truthful answer?
A Yes, it was.
Q In what regard?
A Well, as I understood the question, I never had an apartment there in my name, Charles Ramsey.
Q What did you understand the question to mean?
A That particular question, had I had an apartment there in my name, Charles Ramsey.
Q Why did you consider it to refer to you as Charles Ramsey, your name?
A Because, as I understood that particular question, it referred to me, Charles Ramsey.

Q And is that the way you understood the question to be?
A Yes.
Q Did you attempt to give a truthful answer based on how you were asked the question?
A I attempted to answer the question as it was asked and as I understood it.
Q Question: Mr. Ramsey, did you ever have an apartment at 1111 Massachusetts Avenue, either yourself or in another name?
A My answer would have been yes.
Q Were you ever asked that specific question that way?
A No, I wasn't.
Q At any time in the 365 questions, were you asked that question?
A No.
Q What would the answer have been?
A Yes.
Q "Question: To get back to that apartment at 1111 Massachusetts Avenue, were you paying any of the rent on that apartment?
"Answer: Yes, I was helping."
You used the word helping?
Is that correct?
A That is correct.
Q Which apartment were you referring to?
A Miss Dyson's apartment.
Q "Question: How much were you contributing?"
That was the D.A.'s word-right?–contributing?
A Yes.
Q "Answer: I don't recall.
"Question: Would it have been over $100 a month?
"Answer: I wasn't contributing that much.
"Question: Over $50 a month?
"I guess so.
"About $50 a month?
"(Nodding.)"

I assume that means nodding yes.
"And for how long of a period?
"Five or six months about.
"Question: Was this in 1972?
"Answer: Yes."
Were those truthful answers?
A Yes, it was.
Q Were you in fact contributing $50 a month towards the rent?
A I was.
Q What did you mean by contributing?
What did that mean?
A I was helping her, sharing in the expenses of the apartment.
Q On what basis was that?
Why was that done?
A Miss Dyson at this time was going with a friend of mine.
Q Who was that?
A Mr. Thomas Smith.
And in fact they was living there together.
And after spending $1200 to purchase the furniture and getting the apartment with Mr. Cord that—and they was having it pretty hard financially and I had the understanding with Mr. Smith that he would reimburse me, you know, if I helped him over these hard times.
Q So you indicated you paid about $50 a month for about five or six months?
A Yes.
Q About $250 or $300?
A Yes.
Q Did you ever get paid back?
A No, I haven't.
Q Did you stay there from time to time, too?
A Yes, I would stay in the apartment, because like Miss Dyson would cook and we would watch a game upstairs in her apartment or perhaps when we come back from a sports event we stop in.

Q You were asked the question:
"Have you ever contributed money towards the rent of any other apartments besides this one?
"Answer: No."
Was that a truthful answer?
A Yes, it was.
Q What did you understand the question to mean?
A Did I help or share in the expenses of some other apartment.
Q Did you in fact help or share in any other expenses?
A No, I didn't.
Q Was there any pool or contribution on that?
A No, sir."

Alexander Cord testified that he had been the resident manager of the apartment building during the relevant time period. He recognized Petitioner as staying in the building, "maybe three-four times. Not over five times a month."

His testimony completed the defense case and the government offered no rebuttal evidence.

During the argument for a judgment of acquittal the trial court found *that all of the answers to the questions appearing in the indictment were literally true and could not serve as the basis for a conviction, with the exception of one question.*

"THE COURT: Actually, the false answer here, if there is a false answer for the jury to believe it, 'But you never had an apartment there yourself? No.' That is the pivotal question and answer."

Government counsel agreed to the narrowing of the case to this one question and answer. The major portion of the discussion concerning instructions similarly revolved around this one question and answer.

Following through in the instructions, the court told the jury:

> "Ladies and gentlemen, the question before you for determination is this:
>
> Did this defendant, Charles Ramsey, when he appeared before the Grand Jury . . . and the question was put to him. 'But you never had an apartment there yourself' and he answered 'No', did Charles Ramsey believe that declaration or answer was true?"

REASONS FOR GRANTING THE WRIT

WHILE *BRONSTON v. UNITED STATES*, 409 U.S. 352 (1973), LAID TO REST THE CONFUSION IN THE LOWER COURTS CONCERNING LITERALLY TRUE BUT UNRESPONSIVE ANSWERS IN PERJURY PROSECUTIONS, THERE REMAINS AN AREA OF CONFUSION IN FALSE DECLARATION/PERJURY CASES RELATING TO ANSWERS WHICH WHILE PERHAPS ARE LITERALLY UNTRUE THEY IN FACT ARE SUBJECTIVELY TRUE AND, UNLIKE *BRONSTON*, ARE TECHNICALLY RESPONSIVE TO THE INQUIRY. THE CASE AT BAR IS A TEXT BOOK EXAMPLE OF THE LATTER CATEGORY OF CASE WHICH WILL ILLUMINATE THIS MUCH MISUNDERSTOOD SUBJECT SHOULD *CERTIORARI* BE GRANTED AND FURTHERMORE, WILL CORRECT THE UNJUST RESULT OF LETTING PETITIONER'S CONVICTION STAND. WHILE AFFIRMANCES WITHOUT OPINION ARE *NORMALLY* THE HALLMARK OF ROUTINE APPELLATE ISSUES, WE BELIEVE THAT COURSE FOLLOWED IN THE COURT OF APPEALS BUT HIGHLIGHTS OUR CONTENTION THAT CONFUSION ABOUNDS AT THE APPELLATE LEVEL ON THIS SUBJECT.

This Court's opinion in *Bronston v. United States*, 409 U.S. 352 (1973) resolved one facet of the confusion sorrounding cases of the instant type when it declared:

> "It may well be that petitioner's answers were not guileless but were shrewdly calculated to evade. Nevertheless, we are constrained to agree with Judge Lumbard, . . . , that any special problems arising from the literally true but unresponsive answer are to be remedied through the 'questioner's acuity' and not by a federal perjury prosecution." at 362.

The instant case concerns an even more esoteric and less understood aspect of the law in question, *i.e.*, an answer that is perhaps not literally true but is nonetheless subjectively true. Such an answer, we submit, can no more sustain a federal perjury prosecution than the answer given in *Bronston, supra.*

Illustrations of judicially approved so-called *technically responsive answers* are to be found in cases such as *United States v. Wall*, 371 F.2d 398 (6th Cir. 1967), wherein the female witness was asked before the grand jury:

> "Q. Have you ever been on trips with Mr. X?
> "A. I have not."

Although they, in fact, had been together on a trip in Miami, Florida – travelling there separately – the appellate court reversed the conviction because the words "on a trip" were subject to two interpretations by the witness, *i.e.*, it can mean either that a person travelled with or accompanied another, or, that a person was at a particular place with another.

> "In our opinion, no charge of perjury can be based upon an answer to such a question.

* * * *

> This must be so because the essence of the crime of perjury as defined in the statute is the belief of the witness concerning the veracity of his testimony. United States v. Winter, 348 F.2d 204 (2d Cir. 1965) cert. denied, 382 U.S. 955, 86 S.Ct. 429, 14 L.Ed.2d 360. In a case where the question propounded admits of several plausible meanings, the defendant's belief cannot be adequately tested and it is necessary to determine what the question meant to him when he gave the disputed answer."

Similarly in *Galanos v. United States*, 49 F.2d 898 (6th Cir. 1931), the defendant was asked, "Don't you remember . . . that you made arrangements yourself for the making of a bond?" He replied that he did not, thereby frustrating the attempt to show his association with the person in need of the bond. Although Galanos had made arrangements himself to indemnify the surety on the bond, the court reversed his conviction, noting that the question permitted him to interpret it to mean "whether he did not himself procure the surety company agent to give this bond." See also *United States v. Lattimore*, 127 F. Supp. 405 (D.C. D.C.), aff'd 98 U.S. App. D.C. 77, 232 F.2d 334 (1955).

In summary it may be stated:

> 1. A declaration is not false if it is literally true in response to the question – a case of objective truth.
> 2. A declaration is not false although perhaps literally untrue (objective standard) in response to the question if it is a *technically responsive answer* – a case of subjective truth.

In the case at bar it was conceded at the trial level that all but one of Petitioner's answers before the grand jury as reproduced in the indictment were not violative of 18 U.S.C. §1623 as a matter of law.

The one question and answer remaining which related to 1111 Massachusetts Avenue, N.W., Washington, D.C. was:

"Q But you've never had an apartment there yourself?
A No."

Petitioner unequivocally testified that he interpreted the question as asking whether or not he had an apartment there in his own name and identity, *i.e.*, Charles Ramsey.

"A Because, as I understood that particular question, it referred to me, Charles Ramsey.
Q And is that the way you understood the question to be?
A Yes.
Q Did you attempt to give a truthful answer based on how you were asked the question?
A I attempted to answer the question as it was asked and as I understood it.
Q Question: Mr. Ramsey, did you ever have an apartment at 1111 Massachusetts Avenue, either yourself, or in another name?
A My answer would have been yes."

Had the lease for the apartment herein been signed by Petitioner in his own name, then the answer he gave would have been false by any standard applied. The relevant inquiry is whether or not the question as framed in the context of a grand jury investigation, permitted Petitioner any reasonable leeway in interpreting it as he did, *i.e.*, as inquiring as to whether he had an apartment at the location in question as Charles Ramsey, as opposed to one in another identity.

Webster's Seventh New Collegiate Dictionary gives one definition of yourself as:

"1a: that identical one that is you."

18 U.S.C. §1623(c) states, inter alia, that "it shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true."

At the time Petitioner gave his negative response herein, *he* knew that the had signed an application and lease in the assumed identity of Lawrence Jones. He further knew that the building's personnel recognized him to be one Lawrence Jones and thus, insofar as 1111 Massachusetts Avenue, N.W., Washington, D.C. was concerned, he *was* Lawrence Jones. The following factors were also mentally operative at the time he responded in the grand jury room:

1. The grand jury was conducting an investigation into narcotic law violations and he was a potential target of that investigation.
2. Prior to appearing, he had conferred with counsel and thereafter was determined to answer the questions truthfully but exactly as asked without giving up what he deemed to be *uncalled* for information. This is reflected in the fact that while the indictment alleged other questions and answers to be false, the trial court found every other answer literally true. For example, he testified he never *lived* at that address and the evidence demonstrated he merely *stayed* there occasionally and *lived* day to day with his mother – therefore, that answer was literally true.
3. In the same grand jury session he admitted his personal contact with the building in question and contributing toward the rent on another apartment.

4. While his questioning before the grand jury occurred on March 14, 1973, the apartment he rented as Lawrence Jones was vacated some two months earlier in January of 1973.
5. Of 365 questions propounded to him he consulted with counsel outside the grand jury room on but 19 occasions, and the question upon which this conviction rests did not trigger a consultation.

In addition to this milieu which surrounded Petitioner's testimony was the fact that defense counsel could not be present in the grand jury room and, as a potential indictee, Petitioner was pretty much left alone to spar with an opponent presumably learned in the law who was seeking to ensnare him.

The question: "But you've never had an apartment there yourself?" called for a yes or no answer. In light of all of the factors then operative in his mind, who can say with certitude that it was unreasonable for Petitioner to have understood this to ask whether or not he had one there "as himself" in his own name and identity. How could a jury have concluded beyond a reasonable doubt that Petitioner did not so interpret the question and thus conclude that his response was untrue. That conclusion was particularly speculative when it is obvious that any doubts as to interpretation would have resulted in Petitioner consulting with counsel right outside the door — failure to so do strengthens his contention as to the interpretation he *then* subjectively gave to the question. Furthermore, since the apartment was vacated two months prior to his grand jury appearance, any motive to cover up his rental as Lawrence Jones was greatly dissipated. As we see it the question was not so finite so as to preclude a

modicum of leeway in responding to it. Had Petitioner signed the application and lease in his own name it is obvious he would have answered the question, "yes." Having engaged upon a course of carefully limiting and analyzing each question, it is obvious that the assumed identity at the building made him hesitate and pause in replying. Who can say as a matter of law that it was unreasonable for Petitioner to have reasoned to himself: "I was there but not as myself, because to all concerned I was Lawrence Jones and not Charles Ramsey, therefore I did not have an apartment there in the sense that the prosecutor is asking the question."

Conversely, had he answered the question "yes," he could have concluded more readily that that would be a false answer because Charles Ramsey as an entity did not exist at that building and Petitioner might have believed from the very question that the prosecutor was aware of this. Furthermore, the question as framed called for a "no" response. Because of the negative implication inherent in the question, someone in Petitioner's position was almost propelled into the answer he gave. First because the thrust of the suggested answer helped him to resolve any doubts he had and second because it appeared that the prosecutor wanted a "no" response – a not unreasonable belief if, in fact, the latter was aware of the false identity. In our trial experience such a question on direct examination would be stricken on objection as tending to lead the witness and because a yes or no answer would be fruitless. In a grammatical sense a no response to the question posed results in an affirmative statement because of the joining of two negatives, one in the question and the one in the answer.

In another respect, it is clear that during the entire interrogation Petitioner, by purposely seeking to make his responses as narrow as the questions would permit, was evading and trying to sidetrack the prosecutor. Since *Bronston*, however, it was of zero significance that Petitioner sought to do this or whether he believed that his interrogator intended to propound a broader question than he answered. A witness can legitimately mislead his examiner by narrowing the scope of the question in his own mind so long as the inquiry is sufficiently elastic to afford him that opportunity. From that angle of vision the instant case is seen as a clear example of a technically responsive answer grounded in a set of facts which rendered it subjectively true.

The ultimate correctness of our above-stated position is pinpointed, we submit by the following example:

In answering the question:

> "But you've never had an apartment there yourself?" let us assume Petitioner responded, "No. But I had one there in the assumed name and identity of one Lawrence Jones."

That answer could not have sustained a false declaration charge because it would be technically responsive to the inquiry. The mere fact that Petitioner terminated his answer at "No" before the grand jury and retained the balance of that response in his own mind, did not make the answer he actually gave any the less technically responsive; it remained subjectively true to Mr. Ramsey and, accordingly, unable to shoulder the burden of a false declaration, conviction.

As we see it, affirmance of the conviction below was, in the circumstances extant, directly contrary to the holdings in *Wall* and *Galanos*, *supra*.

CONCLUSION

The record clearly supports our contention that Petitioner was entitled to a judgment of acquittal on the false declaration charge and reflects a misunderstanding at both the trial and appellate levels of the subjective truth defense. In addition to vacating an unjust conviction, *certiorari* should be granted for a broader reason which we alluded to in our Petition For Rehearing in the Court of Appeals, *i.e.*, "the . . . issue before this Court looms large because since Watergate, this type of prosecution has proliferated. Cf. the briefs in *United States v. Dwight L. Chapin*, Appeal No. 74-1648." And so, the lower federal judiciary will be called upon time and time again to resolve this complicated issue without a clear mandate from this Court which the instant case could provide.[1]

When all is said and done, while perhaps Petitioner was foolish in drawing the line so finely in interpreting the question posed in the loneliness of the grand jury room foolishness, we submit, is not the stuff upon which a criminal conviction should rest.

Respectfully submitted,

ALLAN M. PALMER
1707 N Street, N.W.
Washington, D.C. 20036
(202) 785-3900

Counsel for Petitioner

---

[1] As a time saving alternative, this Court might consider granting the writ and remanding the case to the Court of Appeals for reconsideration and elucidation of its reasons for affirming the conviction.

APPENDIX A

United States Court Of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 74-1159

September Term, 1974
Crim. No. 635-73

United States of America

v.

Charles W. Ramsey, Appellant

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 10 1974

HUGH E. KLINE
CLERK

Appeal from the United States District Court for the District of Columbia.

Before: ROBINSON and ROBB, Circuit Judges, and MARKEY*, Chief Judge, United States Court of Customs and Patent Appeals.

JUDGMENT

This cause came on to be heard on the record on appeal from the United State District Court for the District of Columbia, and was argued by counsel. While the issue presented occasion no need for an opinion, they have been accorded full consideratio by the Court. *See* Local Rule 13(c).

On consideration of the foregoing, It is ordered and adjudged by this Court that the judgment----------of the District Court appealed from in this cause is hereb affirmed.

The duty of counsel is fully discharged without filing a sugge tion for rehearing en banc unless the case meets the rigid standar of Federal Rule of Appellate Procedure 35(a).

Per Curiam
For the Court
Hugh E. Kline
Clerk

*Sitting by designation pursuant to § 293(a) (1970).

APPENDIX B

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 74-1159

September Term, 19 74

Criminal 033-73

United States of America

v.

Charles W. Ramsey, a/k/a
Lawrence Jones,
Appellant

U.S. Court of Appeals
for the District of Columbia Circuit

FILED JAN 9 1975

HUGH E. KLINE
CLERK

Before: Robinson and Robb, Circuit Judges; Markey*, Chief Judge U.S. Court of Customs and Patent Appeals.

O R D E R

On consideration of appellant's petition for rehearing,

it is

ORDERED by the Court that appellant's aforesaid petition

is denied.

For the Court:

Hugh E. Kline
HUGH E. KLINE
Clerk

*Sitting by designation pursuant to Title 28 U.S. Code Section 293(a).